

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

No. D-101-CV-2013-02328

SANTA FE REPORTER NEWSPAPER,

Plaintiff,

v.

GOVERNOR SUSANA MARTINEZ,

Defendant.

ANSWER

Governor Susana Martinez, in her official capacity as the Defendant in this action, through her attorneys of record, Paul Kennedy & Associates, P.C., hereby denies all allegations in Plaintiff's Complaint pursuant to Rule 1-008(B) NMRA, except for the following specific averments which are the subject of qualified denials or admissions as indicated below:

I. INTRODUCTION

1. Governor Martinez does not disagree in principle with the first sentence of Paragraph 1 of Plaintiff's Complaint but denies the remaining allegations in Paragraph 1, as well as the legal conclusions that Plaintiff seeks to draw in that paragraph.

2. Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 3 of Plaintiff's Complaint, which has the effect of denying same under Rule 1-008(B).

3. Governor Martinez admits the first sentence in Paragraph 4 of Plaintiff's Complaint. As to the second sentence of Paragraph 4, Governor Martinez states that she is the

Chief Executive Officer of the State of New Mexico but denies that this lawsuit is properly brought against her in that capacity (or in any other capacity).

4. Governor Martinez admits Paragraph 5 of Plaintiff's Complaint.

II. BACKGROUND

5. Governor Martinez states that Paragraph 6 of Plaintiff's Complaint accurately quotes from portions of Sections 14-2-5 and 14-2-6(F) of the Inspection of Public Records Act (IPRA) but denies Plaintiff's interpretation and paraphrasing of those statutes.

6. With respect to Paragraph 7 of Plaintiff's Complaint, Section 14-2-8(D) of IPRA states that: "A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but no later than fifteen days after receiving a written request." Section 14-2-10 of IPRA further states that: "If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request." Governor Martinez denies Plaintiff's interpretation and paraphrasing of those statutory provisions.

7. Governor Martinez admits the first sentence of Paragraph 8 of Plaintiff's Complaint and denies the remainder of the allegations in that Paragraph.

8. Governor Martinez admits that the last three sentences in Paragraph 14 of Plaintiff's Complaint accurately quote from the opinion that the Honorable Murray Gurfein wrote in *United States v. N.Y. Times Co.*, 328 F. Supp. 324, 331 (D.N.Y. 1971); however, Governor Martinez denies Plaintiff's interpretation and paraphrasing of that opinion, as well as the remaining averments in Paragraph 14.

III. FACTS RELATED TO PLAINTIFF'S IPRA REQUESTS

A. IPRA Request 12-048

9. Governor Martinez states that IPRA request 12-048, as referenced in the first sentence of Paragraph 15 of Plaintiff's Complaint, was sent from Joey Peters (["joey@sfreporter.com"](mailto:joey@sfreporter.com)) to Pamela Cason, the Records Custodian for the Office of the Governor (hereinafter "Records Custodian") on June 20, 2012. Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in that paragraph, which has the effect of denying same under Rule 1-008(B).

10. In response to Paragraph 16 of Plaintiff's Complaint, Governor Martinez states that in response to IPRA request 12-048, the Records Custodian produced one e-mail message on August 14, 2012, that was addressed to "Scott Darnell" and dated June 13, 2012. The Records Custodian also responded to IPRA Request 12-048 by sending a three-day letter pursuant to Section 14-2-8(D) of IPRA on June 25, 2012, and a fifteen-day letter pursuant to Section 14-2-10 of IPRA on July 5, 2012. These letters were in substantial compliance with the model form letters contained in Appendix II of the New Mexico Attorney General's *Inspection of Public Records Act Compliance Guide* (7th ed. 2012) (hereinafter *Compliance Guide*). IPRA Request 12-048 did not ask for the e-mail exchange involving Mr. Behrens. Had the requester specified that he was looking for that specific exchange, the Records Custodian would have appropriately forwarded the request to the Public Education Department, and its records custodian would have produced the responsive e-mail, as it had done in response to other specific IPRA requests directed to that department. Governor Martinez is without knowledge or information sufficient to form a belief as to whether or when the Behrens email referenced in Paragraph 16 of Plaintiff's Complaint was

sent to the susana2010.com e-mail account, because e-mails to that account were illegally intercepted as alleged in the criminal indictment captioned *United States v. Jamie Estrada*, No. 13cr1377 (D.N.M. May 29, 2013). Neither the Governor's Office nor its staff members were in a position to produce e-mails that were illegally intercepted, including that particular e-mail sent to the Governor's susana2010.com address.

B. IPRA Request 13-013

11. Governor Martinez states that IPRA request 13-013, as referenced in the first sentence of Paragraph 17 of Plaintiff's Complaint, was sent from Joey Peters (["joey@sfreporter.com"](mailto:joey@sfreporter.com)) to the Records Custodian on February 26, 2013. Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in that paragraph, which has the effect of denying same under Rule 1-008(B).

12. With respect to the first sentence of Paragraph 18 of Plaintiff's Complaint, Governor Martinez states that the Records Custodian responded to IPRA Request No. 13-013 on March 13, 2013, and that the Records Custodian's response included the language quoted in Paragraph 18. The Records Custodian also responded to IPRA Request No. 13-013 with a three-day letter pursuant to Section 14-2-8(D) of IPRA on March 1, 2013, in substantial compliance with the Model Form Letter included in Appendix II of the *Compliance Guide*. With respect to the second sentence of Paragraph 18, Governor Martinez states that the Records Custodian determined that the Office of the Governor did not possess any responsive records to produce in response to IPRA Request 13-013. With respect to the third sentence of Paragraph 18, Governor Martinez states that there exists a ruling by the New Mexico Court of Appeals which concluded that an "email string" concerning public business between Department of Health employees that was in

the Department's custody could not be withheld from an IPRA requester on the basis of a deliberative-process privilege. *See Edenburn v. New Mexico Dep't of Health*, 2013-NMCA-045, 299 P.3d 424. Governor Martinez denies Plaintiff's interpretation and paraphrasing of that judicial opinion. With respect to the last sentence of Paragraph 18, Governor Martinez states that the New Mexico Attorney General's office has opined that email about public business that is created and sent from a public employee's private email account can be a public record within the meaning of IPRA; however, Governor Martinez denies Plaintiff's interpretation and paraphrasing of that opinion, and further denies that the Attorney General's opinion constitutes a "ruling" or has any legally binding effect in this case.

C. IPRA Request 13-023

13. Governor Martinez states that IPRA request 13-023, as referenced in the first sentence of Paragraph 19 of Plaintiff's Complaint, was sent from Justin Horwath (justin@sfreporter.com) to the Records Custodian on May 13, 2013. Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of that paragraph, which has the effect of denying same under Rule 1-008(B).

14. Governor Martinez states that the Records Custodian's response to IPRA request 13-023 contains the language quoted in the first sentence of Paragraph 20 of Plaintiff's Complaint; however, that response was sent to Mr. Horwath via e-mail on June 21, 2013, not July 1, 2013. The Records Custodian also responded to IPRA Request 13-023 by sending a three-day letter pursuant to Section 14-2-8(D) of IPRA on May 16, 2013; a fifteen-day letter pursuant to Section 14-2-10 of IPRA on May 28, 2013; and an additional letter on June 7, 2013, all in substantial compliance with the model form letters contained in Appendix II of the *Compliance Guide*.

Governor Martinez further states that the Records Custodian did not possess any responsive records to produce in response to IPRA request 13-023.

D. IPRA Request 13-025

15. Governor Martinez states that IPRA request 13-025, as referenced in the first sentence of Paragraph 21 of Plaintiff's Complaint, was sent from Justin Horwath (justin@sfreporter.com) to the Records Custodian on May 13, 2013, and specified the time span stated in the second sentence of Paragraph 21.

16. In response to the first sentence of Paragraph 22 of Plaintiff's Complaint, Governor Martinez states that the Records Custodian responded to IPRA request 13-025 by producing 274 pages of records in two batches on August 8, 2013, not August 9, 2013. The Records Custodian also responded to IPRA Request 13-025 by sending a three-day letter pursuant to Section 14-2-8(D) of IPRA on May 16, 2013; a fifteen-day letter pursuant to Section 14-2-10 of IPRA on May 28, 2012; and additional letters on June 7, 2013; June 21, 2013; July 21, 2013; July 26, 2013; and August 2, 2013. These letters were in substantial compliance with the model form letters contained in Appendix II of the *Compliance Guide*. With respect to the remainder of Paragraph 22 and Paragraphs 23-26 of Plaintiff's Complaint, Governor Martinez denies Plaintiff's interpretation and paraphrasing of the documents produced in response to IPRA request 13-025, as well as the legal conclusions that Plaintiff seeks to draw from them.

E. IPRA Request 13-029

17. In response to the second sentence of Paragraph 27 of Plaintiff's Complaint, Governor Martinez states that IPRA request 13-029, was sent from Justin Horwath (justin@sfreporter.com) to the Records Custodian on June 6, 2013, and included the quoted

language in that sentence of Paragraph 27. Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the averments in the third sentence of Paragraph 27, which has the effect of denying same under Rule 1-008(B).

18. Governor Martinez states that the Records Custodian responded to IPRA Request 13-029 by producing the three sets of e-mail messages (four documents) referenced in the first sentence of Paragraph 28 of Plaintiff's Complaint on June 28, 2013. That response was attempted during a power outage and was re-sent on July 1, 2013. The Records Custodian also responded to IPRA Request 13-029 by sending a three-day letter pursuant to Section 14-2-8(D) of IPRA on June 11, 2013, and a fifteen-day letter pursuant to Section 14-2-10 of IPRA on June 24, 2013. These letters were in substantial compliance with the model form letters contained in Appendix II of the *Compliance Guide*. Governor Martinez denies Plaintiff's interpretation and paraphrasing of the Records Custodian's response to IPRA Request 13-029.

F. IPRA Request 13-021

19. With respect to Paragraph 29 of Plaintiff's Complaint, Section 14-2-8(D) of IPRA states that: "A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but no later than fifteen days after receiving a written request;" however, that time period is subject to other IPRA requirements and exceptions, including the provision in Section 14-2-10 for additional time to respond to excessively burdensome or broad requests. Thus, Governor Martinez denies Plaintiff's interpretation and paraphrasing of Section 14-2-8(D) in the first sentence of Paragraph 29, as well as the second sentence of Paragraph 29.

20. In response to the first sentence in Paragraph 30 of Plaintiff's Complaint, Governor

Martinez states that IPRA request 13-021 was sent from Justin Horwath (justin@sfreporter.com) to the Records Custodian on May 3, 2013, not April 25, 2013, and that request was “to inspect the names, positions, and salaries of everyone currently employed in Governor Susana Martinez’ office.” IPRA Request 13-021 did not identify the purpose of that request or state that the requester was seeking “to obtain information from a source other than the ‘Sunshine Portal.’” Thus, Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the averments in the second sentence of Paragraph 30, which has the effect of denying same under Rule 1-008(B).

21. In response to the first sentence in Paragraph 31 of Plaintiff’s Complaint, Governor Martinez states that the Records Custodian responded to IPRA Request 13-021 on May 15, 2013, by stating that: “The information that you requested can be found on the Sunshine Portal website: <http://sunshineportalnm.com/sample/#>.” As noted above, IPRA Request 13-021 was not received until May 3, 2013, and the Records Custodian responded to that request in less than 15 days. Therefore, Governor Martinez denies that the Records Custodian’s response was delayed by 20 days. Moreover, IPRA Request 13-021 did not specify that the requester was seeking information from a source other than the Sunshine Portal or was seeking to verify information already obtained from the Sunshine Portal. Accordingly, Governor Martinez denies Plaintiff’s interpretation and paraphrasing of the Records Custodian’s response to IPRA Request 13-021, as well as the legal conclusions that Plaintiff seeks to draw from it.

G. IPRA Request 11-113

22. In response to Paragraphs 32 and 33, Governor Martinez states that IPRA request 11-013 does not concern a request from the SF Reporter dated December 19, 2011. Governor

Martinez further states that there is an IPRA request with that date, which was designated as IPRA Request 11-113, and which was sent from Alexa Schirtzinger (editor@sfreporter.com) to the Records Custodian. IPRA Request 11-113 sought the following records as quoted in the first sentence of Paragraph 32 of Plaintiff's Complaint: "The 2011 daily calendar of events, meetings and appointments for Gov. Susana Martinez." IPRA Request 11-113 did not specify that the requester was seeking a listing of "all events, public and private appearances and appointments," nor did IPRA Request 11-113 specify that the requester was seeking the "appointment books; daily, weekly, and monthly calendars, and back up materials" referenced in Paragraph 33 of Plaintiff's Complaint or in the New Mexico Administrative Code. Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the averments in the second sentence of Paragraph 32, which has the effect of denying same under Rule 1-008(B). With regard to the last sentence of Paragraph 32, Governor Martinez states that the Records Custodian provided the following response to IPRA Request 11-113 on February 20, 2012: "Please find attached to this email a copy of the Governor's calendar of public appearances, including speaking engagements, press conferences, and other public meetings from November 2011 to present. This information also exists on a regularly updated archive of public appearances on the front page of the Governor's website at www.governor.state.nm.us. We have provided you a printed copy of the calendar from January 2011-December 2011." In addition to that response, the Records Custodian's correspondence regarding IPRA Request 11-113 included sending a three-day letter pursuant to Section 14-2-8(D) of IPRA on December 22, 2011; a fifteen-day letter pursuant to Section 14-2-10 of IPRA on January 4, 2012; and additional letters on January 19, 2012, and February 3, 2012. These letters were in substantial compliance with the model form

letters contained in Appendix II of the *Compliance Guide*. Governor Martinez denies Plaintiffs' interpretation and paraphrasing of the Records Custodian's response to IPRA Request 11-113, as well as the legal conclusions that Plaintiff seeks to draw from that response.

23. In further response to Paragraph 33 of Plaintiff's Complaint, Section 1.18.356.15 of the New Mexico Administrative Code refers to permanent retention of the "record of the governor's scheduled appointments including: appointment books; daily, weekly, and monthly calendars; and back-up materials" upon "transfer to the New Mexico state archives at the end of the gubernatorial term"; however, Governor Martinez denies Plaintiff's interpretation and paraphrasing of Section 1.18.356.15, as well as the legal conclusions that Plaintiff seeks to draw from that section and from the Public Records Act ("PRA") (NMSA 1978, §§ 14-3-1 to 14-3-25), which is distinct from the Inspection of Public Records Act ("IPRA") (NMSA 1978, §§ 14-2-1 to 14-2-12).

H. IPRA Request 13-040

24. In response to the first sentence in Paragraph 34 of Plaintiff's Complaint, Governor Martinez states that IPRA request 13-040, was sent from Alexa Schirtzinger (editor@sfreporter.com) to the Records Custodian on June 12, 2013, not June 6, 2013. Governor Martinez states that IPRA Request 13-040 included the quoted language in the first sentence of Paragraph 34, except that the end date for the requested records was mis-spelled as "Dececeember 31, 2012." Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the averments in the second sentence of Paragraph 34, which has the effect of denying same under Rule 1-008(B).

25. In response to Paragraph 35 of Plaintiff's Complaint, Governor Martinez states that

the Records Custodian responded to IPRA Request 13-040 by sending a three-day letter pursuant to Section 14-2-8(D) of IPRA on June 17, 2013; a fifteen-day letter pursuant to Section 14-2-10 of IPRA on June 27, 2013; and additional letters on June 28, 2013; July 26, 2013; August 8, 2013; and August 23, 2013, all in substantial compliance with the model form letters contained in Appendix II of the *Compliance Guide*. On August 26, 2013, the Records Custodian received an email message from the requester stating that: “As you know, I am no longer at the reporter. In future, please correspond with me about this IPRA via my private email account.” The Records Custodian complied with that request in subsequent correspondence with the requester.

I. IPRA Request 12-091

26. Governor Martinez admits that IPRA request 12-091, as referenced in the first sentence of Paragraph 36 of Plaintiff’s Complaint, was sent from Justin Horwath (justin@sfreporter.com) to the email account of the Records Custodian on December 12, 2012. IPRA Request 12-091 asked to inspect “all pardon requests made to Gov. Susana Martinez made in 2012,” and “all documents relating to a denial or acceptance of pardons held by the governor’s office in the year 2012.” Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 36, which has the effect of denying same under Rule 1-008(B).

27. In response to Paragraph 37 of Plaintiff’s Complaint, Governor Martinez states that the Records Custodian responded to IPRA Request 12-091 on January 25, 2013, and that the Records Custodian’s response included 98 pages of letters rejecting or granting pardons, as well as the language quoted in the fourth sentence of Paragraph 37, and a detailed explanation of the rationale for asserting a Parole Board privilege and/or Executive Privilege as to other documents.

The Records Custodian also responded to IPRA Request 12-091 by sending a three-day letter pursuant to Section 14-2-8(D) of IPRA on December 19, 2012; a fifteen-day letter pursuant to Section 14-2-10 of IPRA on December 31, 2012; and additional letters on January 4, 2013; and January 17, 2013. These letters were in substantial compliance with the model form letters contained in Appendix II of the *Compliance Guide*.

28. Governor Martinez states that she is without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence of Paragraph 38, which has the effect of denying same under Rule 1-008(B); however, the Records Custodian's response to IPRA Request 13-091 is consistent with the *Compliance Guide*'s listing of Section 31-21-6 of the Probation and Parole Act as an authorized exception under Section 14-2-1(A)(8) of IPRA. Governor Martinez admits that in 2010, Danny Diaz made the statement quoted in the second sentence of Paragraph 38.

29. Governor Martinez does not deny that Section 31-21-6 of the Probation and Parole Act contains the language quoted in the third sentence of Paragraph 39 of Plaintiff's Complaint; however, Governor Martinez denies Plaintiff's interpretation and paraphrasing of that statute, as well as the legal conclusions Plaintiff seeks to draw in Paragraph 39.

30. Governor Martinez agrees that some of the records requested in IPRA Request 12-091 are subject to executive privilege as stated in the first sentence of Paragraph 40 of Plaintiff's Complaint. Governor Martinez denies Plaintiff's interpretation and paraphrasing of the Records Custodian's response to IPRA Request 12-091, as well as the legal conclusions Plaintiff seeks to draw in Paragraph 40 of the Complaint.

IV. FACTS RELATED TO PLAINTIFF'S STATE CONSTITUTIONAL CLAIM

31. Governor Martinez denies Paragraph 43 of Plaintiff's Complaint and states that her spokesmen did respond to some of the specific SF Reporter articles listed in that paragraph during the seven-month period commencing on December 18, 2012. The Governor's spokesman, Enrique Knell, responded to the "Pardon Me" article; Mr. Knell referred an inquiry on the "Testing Out" article to Larry Behrens at the Public Education Department; and Mr. Knell referred an inquiry on the "Balloon Payments" article to Kenny Vigil at the Department of Health. Mr. Knell also responded to other inquiries from persons identifying themselves with the SF Reporter, including an inquiry about the replacement of Rep. Easley and an inquiry about the status of a former Workforce Solutions employee who had been arrested on a DWI charge. Moreover, the Office of the Governor includes the SF Reporter in all of the Governor's press release and advisory lists so that its employees are aware of the Governor's announcements, events, and appearances. Thus, Governor Martinez denies that she has engaged, or is engaged, in any unlawful discrimination against Plaintiff or unlawful impairment of Plaintiff's news gathering.

32. In response to Paragraphs 44 and 45 of Plaintiff's Complaint, Governor Martinez states that her spokesman responds to as many media inquiries as possible and that it is not possible to respond to all inquiries her office receives. The Governor's spokesman's responses included, but were not limited to, the email containing two website links that is referenced in the second sentence of Paragraph 45. Governor Martinez denies any unlawful disparate treatment of Plaintiff.

33. In response to Paragraph 46 of Plaintiff's Complaint, Governor Martinez states that an individual identifying herself with the SF Reporter called the Governor on her cellular telephone, and that the Governor answered the call and referred the individual to the Governor's

spokesman, Mr. Knell, as she would refer any other media inquiry. Governor Martinez denies the remaining averments in Paragraph 46.

WHEREFORE Governor Martinez respectfully requests that this Court deny the relief requested in Plaintiff's Complaint in its entirety, dismiss this action with prejudice, and grant such further relief in Defendant's favor as the Court deems just and proper.

DEFENSES

1. This Court lack subject-matter jurisdiction over Plaintiff's claims and requested relief in this action because Plaintiff lacks standing, Plaintiff's claims are moot, and the relief Plaintiff requests in this action is non-justiciable.

2. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

3. Plaintiff has failed to join one or more necessary and indispensable parties pursuant to Rule 1-019 NMRA.

4. The IPRA requests referenced in Plaintiff's Complaint were addressed to the Records Custodian, not to Governor Martinez.

5. The right to inspect public records under IPRA is subject to the exceptions stated in Section 14-2-1(A)(1) through (8) of that statute, which include records not subject to disclosure "as otherwise provided by law."

6. Governor Martinez is not a "public body" as defined in Section 14-2-6(E) of IPRA.

7. Section 14-2-8(B) of IPRA states that: "Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record."

8. Section 14-2-8(C) of IPRA limits a custodian's duty to respond to IPRA requests that fail to define the requested records with "reasonable particularity."

9. Section 14-2-8(D) of IPRA limits a custodian's duty to respond to IPRA requests that are not directed to "the custodian having possession of or responsibility for the public records requested."

10. Section 14-2-10 of IPRA provides an additional reasonable period of time for a custodian to respond to an IPRA request that is excessively burdensome or broad.

11. Section 14-4-12 of IPRA provides an adequate and exclusive remedy at law.

12. Section 14-4-12 of IPRA does not provide a private right of action or remedy to enforce requests with which a public body has already complied.

13. Section 14-2-12(A)(2) of IPRA does not provide a private right of action or remedy to enforce an IPRA request unless such an action is brought by the same "person whose written request has been denied."

14. The Office of the Governor complies with applicable regulations regarding record retention.

15. No provision of IPRA requires a custodian to produce records which were illegally intercepted before an IPRA request for such records was received.

16. Governor Martinez's procedure for retrieving records in response to Plaintiff's IPRA requests must account for any limitations imposed by the Fourth Amendment to the United States Constitution, as well as its counterpart in Article II, Section 10 of the New Mexico Constitution.

17. Governor Martinez's procedure for retrieving records in response to Plaintiff's IPRA requests must account for any limitations imposed by the First Amendment to the United States Constitution.

18. New Mexico courts have interpreted Article II, Section 10 of the New Mexico Constitution more broadly than its federal counterpart in the Fourth Amendment of the United States Constitution.

19. New Mexico courts have not interpreted the “free press” clause in Article II, Section 17 of the New Mexico Constitution more broadly than its federal counterpart in the First Amendment to the United States Constitution.

20. Neither the New Mexico Tort Claims Act nor any other provision of New Mexico law provides a waiver of immunity that would authorize or allow an award of damages or attorney fees to remedy the alleged violation of Plaintiff’s rights under the New Mexico Constitution in this case.

21. The equitable or injunctive relief requested in Plaintiff’s Complaint is not justiciable and would violate the Separation of Powers guaranteed by Article III, Section 1 of the New Mexico Constitution, because it would put the judicial department in charge of creating regulations for, and administering the operations of, the office of the Governor--a power which properly belongs to the executive department.

22. The equitable or injunctive relief requested in Plaintiff’s Complaint is not justiciable and would violate the Separation of Powers guaranteed by Article III, Section 1 of the New Mexico Constitution, because it would put the judicial department in charge of adding language to IPRA that is not there--a power which properly belongs to the legislative department.

23. The relevant requirements of IPRA were not clearly established at the time of the events alleged in Plaintiff’s Complaint, thereby depriving Governor Martinez of due process of law in the form of fair and timely notice of what the law requires, in violation of the Governor’s

rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article II, Section 18 of the New Mexico Constitution

24. IPRA is preempted under the Supremacy Clause in Article VI of the United States Constitution to the extent it would require Governor Martinez to respond to an IPRA request by retrieving records when a warrant or other legal authorization is required by federal law.

25. Plaintiff's claims are barred by the doctrines of illegality and unclean hands.

26. Plaintiff's claims are barred by the doctrines of impossibility and impracticability.

27. Plaintiff's claims are barred by the doctrines of estoppel by laches, acquiescence, and waiver.

WHEREFORE, Governor Martinez respectfully requests that this Court deny the relief requested in Plaintiff's Complaint in its entirety, dismiss this action with prejudice, and grant such further relief in Defendant's favor as the Court deems just and proper.

Respectfully submitted,

/s/ Paul J. Kennedy
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I hereby certify that a copy of the foregoing
document was served via electronic transmission
to all counsel of record this 7th day of October, 2013.

/s/ Paul J. Kennedy
Paul J. Kennedy